

# Internet Matters

**Age Appropriate Design Code  
Response to ICO Consultation  
May 2019**

## Introduction to Internet Matters

Internet Matters is a not-for-profit organisation dedicated to helping families keep their children safe online. We are pro-technology, as we believe children from connected homes have better outcomes, and we are focused on providing evidenced based, useful and practical advice to families at their point of need. Our resources come in many ways – by age of child, by issue, by app, device or platform. We are backed by some of the largest companies in the world and through them we are able to reach almost all UK parents. We know that nearly 9 in 10 parents will recommend us to friends and family, and as a result of seeing our content parents are significantly more likely to take some form of action to minimise the risks their children face online. We sit on the Executive Board of UKCCIS and lead a working group on protecting vulnerable users online.

## Summary of our response to the Draft Code

**The age appropriate design code is an ambitious and welcome move** which recognises the importance society places on online safety for children and seeks to better protect them. Grounded in the Kidron amendment to the Data Protection Bill, ICO has taken a wide interpretation of the wording in the Act, and there is much to support in it. **There can be no doubt that the code will address many of the online risks that children face today.** We agree that children should have the same protections online as they do offline, and the code does much to deliver against this challenge. The principle of centring children's wellbeing and best interests at the heart of the services they actually use is to be applauded and is one we wholeheartedly support. We share the intent and ambition of the UNCRC on the best interests of the child. As an online safety organisation, we are committed to campaigning for greater protection for children online and lend our support to the code.

We also share the view that **companies who provide services that children use online could and must do more to keep children safe.** Of course, transparency is vital, as is an end to data misuse. Likewise, we agree that privacy settings should be high by default for younger children, with older children enjoying a more age appropriate environment as they grow up. The goal should be to create a culture where companies could race to the top, in their efforts and investment to keep children safe online.

However, we find that further clarification and consideration is required in order to ensure the code does not have unintended consequences. From our reading of the code as currently written, we believe there is a risk that the code will not necessarily achieve the outcomes we all want - both a safer internet for children, but also one that continues to provide them with a rich, engaging, and innovative environment in which they can grow, learn and thrive in our fast moving, digital world

We believe it is important to focus on the harm we are trying to prevent, rather than the technology through which the harm is manifest. This approach drives to the heart of the problems, rather than the technology that is used, or the data being collected. It may also very well be in the best interests of the child.

So, whilst the intention and some of the principles of the code are good and ground-breaking, we have some concerns with the scope, legal basis, and approach of the draft code, and would welcome more clarity around the following points. In our judgment, investing the time to get the fundamentals right at the start will increase the likelihood of the Code landing well and achieving its objectives, making the UK the safest place for a child to be online.

1. Scope of the Code - The reliance on 'likely to be used by a child' wording in the Act is imprecise and may lead to unintended consequences.
2. Friction with GDPR - Elements of this code appear to be in conflict with the GDPR requirements for data minimisation. This could create confusion and complication and risks legal wrangling, which could undermine the implementation of the code.

3. Content regulations - Breadth of the cumulative and interconnected provisions means the code flows between design and content regulation, which was unexpected, and doesn't take account of the code of conduct proposed in the Online Harms White Paper.
4. Proportionality - The current approach is prescriptive rather than proportionate, which seems to put it at odds with both your own research findings and our own. Whilst parents do want companies throughout the internet eco-system to do more to help them keep their children safe, they do appreciate the benefits of connectivity. We welcome a rebalancing of the asymmetrical relationship between tech, parents and children. A focus on the harms may be achieve this faster and more effectively.
5. Aligning ambitions - The tone and approach of this code is different from the Online Harms White Paper, a contrast made even more stark because of the proximity of publication. Additional clarity would be welcomed on the relationship between the Online Harms White Paper and the Code. Whilst we appreciate they are owned in different parts of the machinery of government, they overlap in many places so greater clarity would be helpful.

**Further clarification is required on the following:**

1. **Scope – “Likely to be used by a child”** - We are concerned about the unintended consequences of this scoping clause. Whilst we recognise its provenance from the Act, the interpretation used for the code could be problematic. It could in effect cover significant parts of the internet. Whilst we understand and welcome the ambition to get beyond the services targeted to children - reflecting their actual behaviour - the current wording would benefit from greater clarification. For example, guidance around these types of questions would be helpful:
  - What does the ICO deem to be an acceptable way of determining likelihood that children use a given service? Clearly the ambition to minimise data collection from children is an important principle in the code, yet there is a requirement to understand the age range of likely child users in order to meet the intent of the code.
  - Where does the proportionality principle fit when assessing ‘small proportion’ of users? Will the Commissioner provide a percentage of users, or should this assessment be based on actual numbers of people?
  - What evidence would the Commissioner accept on user age? Would a sample of users provide an acceptable level of reassurance (and what sample size would be deemed robust)? This approach would seem more consistent with the data minimisation requirements of GDPR than a wholesale requirement to prove the age of all users. Such a burden may be deemed excessive for all websites to comply with, introducing a need to share personal data prior to visiting a site.

This is of direct relevance to Internet Matters as the effect of the code could mean that websites like our own ([www.internetmatters.org](http://www.internetmatters.org)) which exist to keep children safe online will, as it currently stands, need to be behind an age gate as we cannot prove that children do not visit the site for advice on how to stay safe online. As the default position is to follow the code, this gives us the unenviable choice of either ‘dumbing down’ content to be age appropriate for young children or implementing robust age verification. This could be an unintended consequence of a well-intentioned idea.

A proportionate approach that seeks to prioritise the types of services that children acknowledge they use, where they present a known risk to children, must be at the heart of this new code. Whilst we wholeheartedly agree that children need special protection, a more considered approach that better reflects the reality of how children and adults use the internet could make the code more effective. One example of this is the forthcoming implementation of age verification on online pornography websites. Addressing a specific harm with a targeted response may create an easier and more effective basis for compliance with the code, and is likely to achieve wider support and higher degrees of compliance.

2. **Friction with GDPR** – our understanding of the code would suggest practical implementation may bring it into conflict with GDPR on at least two counts:
- **Age of a child** - Our understanding is that there is some flexibility under the GDPR regulations for the local DPA to set the age under which people are considered children. That number varies across member states between 13-16 years, and in the UK is 13. However, the code suggests everyone under 18 is a child. We are not clear on how this could work, when the legal basis for the Code resides in GDPR. We are concerned that this lack of clarity will undermine the intentions of the code and get caught up in legal wrangling.
  - **Data minimisation** - One of the guiding principles of GDPR is data minimisation. The draft code seems to undermine that by requiring documentary evidence that websites are not visited by children. This will necessitate either full compliance with the code, meaning every website must be suitable for children, or some element of information gathering to verify the age of its users. We cannot reconcile these two objectives and are unclear which would take precedence. Clarity would be welcome here.
3. **Breadth of the cumulative and interconnected provisions** means the code flows between design and content regulation, which was unexpected, and doesn't take account of content tools that already exist. We had expected the Age Appropriate Design to focus on design, but it's clear that the ambitions of the code stretch significantly further than that into content. We observe that this is an interesting choice, given the Online Harms White Paper. It would be helpful to have more clarity on the relationship between the two documents. Age verification is already in place on gambling websites, and soon to be on online pornography websites. Internet Matters research on age verification<sup>1</sup> suggests parents overwhelmingly support age verification as a way to ensure children are not exposed to adult content (83%), but also for other classifications of site, including drugs, self-harm and suicide. Could the code be more specific as to when age verification is required?
4. **Code is not supported by your research findings** - the research you have published on this subject - conducted by Revealing Reality - does not seem to support such a wholesale change to the internet, where the code appears to suggest either age verification for every website or produce content suitable for the youngest of children. Your survey, much like our own research, demonstrates that parents and children have varying degrees of concern and interest in this area, and will reach different and sometimes conflicting conclusions based on the balance of privacy vs convenience. In a well-intentioned attempt to make the internet a better place for children, this code has missed the trade-offs that internet users make balancing free apps with personalisation and convenience and cost. Threaded throughout the research findings are reflections, conclusions and comments that suggest parents and children have both a nuanced and imperfect understanding of how data is used by internet companies.

<sup>1</sup> Internet Matters Report "We need to talk about Pornography" - to be published in June 2019.

We've taken a selection of three paragraphs from different pages in the report to highlight this:

<i>Some saw profiling as having benefits for their children. YouTube recommendations, for example, were seen as especially convenient, while others valued their children being shown educational content online. Others - especially parents and carers of neuro-atypical children - saw profiling as problematic. They noted that neuro-atypical children often struggle to express themselves when using search engines, meaning that they frequently access content that they weren't looking for – from Page 24</i>
The code suggest that nudge techniques may not be used to 'extend use' without consideration for the purpose of that extended use, which may not be harmful in any way.
<i>When adverts are guaranteed, targeted marginally trumps 'random'. In the context of sites requiring advertising revenue to remain free to use, parents and carers preferred that their child received targeted rather than "random" advertising - 55% vs. 45%, (Figure 10). It is worth noting that the language of the question answers could play a part in the outcome – "random" could be perceived negatively, and earlier in the survey we have discussed the idea that targeting could mean providing age appropriate adverts, which is largely seen as positive – from Page 43</i>
The codes suggest that profiling is only acceptable for a 'compelling reason' which would seem to suggest that children will be excluded from all services that are provided free on the basis of targeted advertising, which could well include educational, fun and creative sites.

## Addressing these challenges

For the code to achieve its objectives we believe would propose a number of things for the ICO to consider:

1. **The principle of proportionality should be adopted, in tandem with the best interests of the child**, which would bring this code more into line with the approach taken by the Online Harms White Paper and provide a more targeting approach which may have a greater impact. We share the view which perhaps guided the development of the code - that tech companies could and must do more to keep children safe online. The way to achieve this, in our judgement, is for the code to be proportional becoming a critical document that changes the very way companies engage with children.
2. **The best interests of the child should, in our judgement, take due regard of harms, rather than simply considering the technology**. This would provide some future proofing and a more realistic understanding of what the internet is and how children use it. One way to think about this is to focus on the harm, rather than the technology. We would all agree that using AI to nudge children towards self-harm content is not a good thing. However, using the very same technology to nudge children towards educational opportunities is good them, for that child and for society. Therefore, a more harms-based focus could serve children better.
3. It is important the code does not unintentionally result in the withdrawal of positive online experiences for children. The **technical implications of the code have to be deliverable** by the time the code comes into force. Some of these standards may be so technically complex that compliance within such a short timeframe will be very challenging, and as a result services may have to be withdrawn. Whilst it's tempting to think that big tech companies can always find the solutions to issues if they spend enough, we would welcome more time to understand how best to achieve the objectives of the code.

Achieving this noble intent is complex, challenging and untried. Common sense would suggest that there is more tech companies can do, and that technology solutions can deliver so much. However, **technical solutions are not the only way to address to online harms**. Many harms are behavioural, which the code does not always consider (although the White Paper does). Internet Matters has long argued that a critical factor in putting children's interests first is to educate parents on online safety and digital wellbeing, through a public service broadcasting campaign. Whilst some things are complex the message here is not - it's simply to urge parents to get involved with their children's online lives and refer them to a website with expert information tailored for them. We believe that will go a long way towards helping children flourish online – which has to be in their best interests.

## Conclusion

We all want the Age Appropriate Design Code to work. We want to create a safer and better online experience for children and adults, where the benefits of connectivity can be enjoyed, and the risks and harms reduced. **The aims and objectives of the code to design a more age appropriate internet is spot on, and which we support unreservedly.** Greater clarity is needed however to move this draft code from what is it, into a workable code which will have the significant impact we all want it to and enable children to flourish. This is such an important document; we have to take the time to get it right. **This code will be a critical document that changes the very way companies engage with children.**